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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN KITA, a single man;

Plaintiff,

v.

THE CITY OF SEATTLE, a Municipal
Corporation; SEATTLE POLICE OFFICER K.V.
OSHAKAWA-CLAY a/k/a K.V. CLAY, Serial
Number 6806; and SEATTLE POLICE
OFFICERS 1-4.

Defendants.

No.

C10- 160 JCC

COMPLAINT FOR ASSAULT AND
BATTERY, OUTRAGEOUS CONDUCT,
USE OF EXCESSIVE FORCE,
INTENTIONAL AND NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS,
NEGLIGENCE AND DAMAGES ARISING
FROM VIOLATION OF CIVIL RIGHTS

JURY DEMANDED



10-CV-00160-CMP

Plaintiff John Kita allege as follows:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C § 1983 for violations of the Fourth and Fourteenth Amendments to the United States Constitution and various state and common law claims. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1343 *et seq.*

COMPLAINT FOR DAMAGES - 1

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ORIGINAL

56A32077 JCC

2. There exists a common nucleus of operative facts as to plaintiff's state and federal claims. As a consequence, this Court has pendent jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

3. Venue in the captioned District Court pursuant to 28 U.S.C. § 1391 stems from the fact that the events or omissions giving rise to the claims occurred in the judicial district of the captioned District Court.

4. The events and actions complained of occurred in King County, Washington, within the jurisdiction of this Court.

II. PARTIES

5. Plaintiff John Kita is a resident of Seattle, King County, Washington.

6. Defendant K.V. Clay a/k/a K.V. Oshakawa-Clay, Serial Number 6806, hereinafter referred to as “K.V. Clay” is and was a Police Officer within the City of Seattle at all relevant times in this action.

7. Defendant City of Seattle is a municipal corporation under the laws of the State of Washington with the right to sue and be sued in its own name and stead.

8. Pursuant to RCW 4.96, plaintiff has served Defendant City of Seattle with a claim for damages. More than 60 days have elapsed since the claim for damages was served on defendant City of Seattle.

9. Defendants City of Seattle Police Officers John Doe 1-4 were employed by Defendant City of Seattle as police officers and at all times material were acting within the

1 scope of their employment. Upon discovery of their identities, the same will be substituted
2 herein.

3 **III. CLAIM FOR DAMAGES**

4 10. A Claim for Damages was properly filed with the Defendant City of Seattle
5 pursuant to Washington law. More than sixty (60) days have elapsed since the filing of that
6 claim. Attached hereto as Exhibit A is plaintiff's claim for damages, which by this reference is
7 incorporated in this complaint.

8 **IV. JURY DEMAND**

9 11. Pursuant to Fed. R. Civ. P. 38, plaintiff hereby demands trial by jury.

10 **V. BACKGROUND FACTS**

11 12. On or about February 2, 2008, Seattle police officer, K.V. Clay, with excessive
12 force, unlawfully beat Kita, threw him to the ground, kneed him in the back, beat him more,
13 extremely twisted his arm, and twisted and bent his legs to a hog tie position. The incident
14 was recorded on video which has already been produced to defendants and which is
15 incorporated herein. Kita was injured during the incident.

16 **VI. CLAIMS AND CAUSES OF ACTION**

17 **A. VIOLATION OF 42 U.S.C. § 1983**

18 13. Plaintiff realleges each and every allegation in the preceding paragraphs as though
19 fully set forth here.

1 14. Defendant K.V. Clay used excessive force and violated plaintiffs' civil rights under
2 the Fourth and Fourteenth Amendments to the United States Constitution.

3 15. Kita suffered injuries and damage.

4 **B. ASSAULT AND BATTERY**

5 16. Plaintiff realleges each and every allegation in the preceding paragraphs as though
6 fully set forth herein.

7 17. The actions of Defendant K.V. Clay constituted assault and battery.

8 18. As a result of Defendant K.V. Clay's assault and battery, plaintiff was physically
9 injured and has pain and suffering as a result of Defendant K.V. Clay's assault and battery.

10 **C. OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

11 19. Plaintiff realleges each and every allegation in the preceding paragraph as though
12 fully set forth herein.

13 20. Defendant K.V. Clay's conduct was extreme and dangerous.

14 21. Defendant K.V. Clay intentionally or recklessly inflicted emotional distress upon
15 plaintiff.

16 **D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

17 22. Plaintiff realleges each and every allegation in the preceding paragraphs as though
18 fully set forth here.

19 23. Defendant K.V. Clay had a duty to deal with plaintiff in a careful and professional
20 manner so that he would not be harmed.

24. Defendant K.V. Clay breached his duty.

25. As a result of K.V. Clay's tortuous conduct, plaintiff suffered physical injury and emotional distress.

E. NEGLIGENCE

26. Plaintiff realleges each and every allegation in the preceding paragraphs as though fully set forth here.

27. Defendant K. V. Clay had a duty to act reasonably and with appropriate care when dealing with plaintiff and any other members of the public.

28. Defendant K. V. Clay acted negligently in the manner that he interacted with plaintiff, including the manner in which he attempted to arrest the plaintiff.

29. In addition, the City of Seattle had a duty to train and supervise K.V. Clay. Upon information and belief, the City breached its duties, and plaintiff was damaged by the negligence

VII. REQUEST FOR RELIEF

Plaintiff requests that the court enter judgment against each of the defendants as follows:

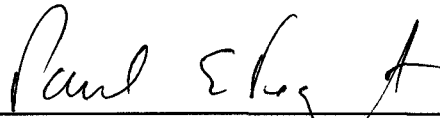
a. Award of damages to plaintiff, including punitive damages as appropriate and lawful.

b. Award of attorneys' fees and costs incurred by the plaintiff pursuant to his claim under 42 U.S.C. § 1988.

c. Such additional relief which the court finds equitable and just.

1
2 DATED this 27th day of January, 2010.

3 DEARMIN FOGARTY PLLC

4 
5

6 Paul E. Fogarty, WSBA No. 26929

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